IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2805 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVSTHAN VITHAL MANDIR TRUST - Petitioner(s)

Versus

MINAKSHIBEN WD/O RASIKLAL JAISWAL & 6 - Respondent(s)

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Appearance :

MR NAVIN PAHWA for Petitioner(s) : 1,

MR MIHIR THAKORE ON behalf OF MTM HAKIM for Respondent(s) : 1 - 2,4 - 7.

NOTICE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/04/2006

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner Trust - original landlord has challenged the legality and validity of the judgment and order passed by the the Gujarat Revenue Tribunal dtd.25/1/1990 in Revision Application No.TEN/BA/384 of 1986 in dismissing the Revision Application and confirming the order passed by the the Deputy Collector (Tenancy Appeals), Vadodara dtd.23/10/1985 in Tenancy Appeal No.19 of 1979 as well as the order passed by the the Mamlatdar and ALT, Vadodara dtd.6/7/1979 in Tenancy Case No.3467 of 1977 declaring Rasiklal Tilakram Jaiswal - respondent herein as tenant of the land bearing Survey No.707 admeasuring 20 Acres and 26 Gunths of land, situated at Vadodara under sec.32(O) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “the Act” for short).

2. Few facts are necessary for the purpose of

determination of the present petition as narrated in the memo of the petition.

3. The petitioner – Devasthan Vithal Mandir Trust (hereinafter referred to as "the landlord") is the owner of the land bering Survey No.707 ad-measuring 20 Acres and 26 Gunthas of land, situated at Vadodara. The said land is situated within the limits of former Baroda Municipal Borough constituted w.e.f. 1/4/1967 as the Municipal Borough of the City of Baroda. Under sec.88 (1)(C) of the Act, nothing in secs.1 to 87 of the Act shall apply inter-alia to any area within the limits of Municipal Borough constituted under the Bombay Municipal Boroughs Act,1925. Under unregistered Kabulatnama / Agreement dtd.2/6/1956, one Surajram Kashiram Jaiswal, uncle of Rasiklal Tilakram Jaiswal took the land on lease for three years on condition of payment of rent of Rs.2022.00 per annum.

4. The Tenancy Act was amended w.e.f. 1/8/1956 by Bombay Act No.13 of 1956. Sec.43(C) came to be inserted in the Tenancy Act by the said Bombay Act No.13 of 1956 and it provided that nothing in sec.32 to 32R (both inclusive) and sec.43 shall apply to

lands in the areas within the limits of inter-alia Municipal Borough constituted under the Bombay Municipal Boroughs Act, 1925. Under the said Amending Act NO.13 of 1956, a new Sec.88 was substituted for the original sec.88. The new Section 88, in so far as is relevant, provided that nothing in Sec.1 to 87 of the Tenancy Act shall apply inter-alia to any area which the State Government may from time to time, by notification in the Official Gazette, specify as being reserved for non-agricultural or industrial development. According to the petitioner on ¼/1957 i.e. the Tiller's Day the Tenancy Act did not apply to the land in question. The Government of Bombay issued Notification dtd.21/5/1958 (Annexure-B to the petition) specifying the areas within the limits of Municipal Borough of Baroda as being reserved for Non-Agricultural and Industrial development.

5. The petitioner trust – landlord instituted suit being Regular Civil Suit NO.143 of 1959 in the Court of learned 3rd Joint Civil Judge (SD), Vadodara against Surajram Kashiram Jaiswal for the recovery of arrears of rent of Rs.3479.69 ps. The said Surajram contested the suit on the ground that his rights in respect of the suit land which had accrued before the issuance

of the Bombay Government Notification dtd.21/5/1958 was issued, substituted and were not affected by the said notification, that the Mamlatdar had determined the fair rent in accordance with the provisions of sections 8 and 9 of the Tenancy Act and the Civil Court had no jurisdiction. The trial court dismissed the suit on the ground that since the Mamlatdar had already determined the reasonable rent, the Civil Court was not competent to determine the same again. Against the said judgment and decree, an appeal was preferred before the learned District Judge, Baroda who dismissed the said appeal, against which a Second Appeal being Second Appeal No.313 of 1963 was preferred before this Court and this Court held that in view of the notification dtd.21/5/1958, the provisions of Tenancy Act will not apply retrospectively and remanded the matter to the trial court for determination of reasonable rent. The trial court determined the reasonable rent at Rs.2225.00 per annum. The said decision was challenged before this Court and this Court allowed the said appeal by judgment and order dtd.4/10/1971 quashing and setting aside the judgment and decree passed by the courts below and decreed the suit for

a sum of Rs.3479.69 ps. The said Surajmal challenged the said order passed by this Court before the Hon'ble Supreme Court and the Hon'ble Supreme Court by judgment which is reported in AIR 1966 SC 2204 : XXVIII(2) GLR 791 dismissed the appeal confirming the order passed by this Court.

6. The petitioner Trust filed a suit being Regular Civil Suit NO.387 of 1962 for the possession of the land in question against Surajmal Kashiram and Rasiklal Tilakram and the said suit seems to be pending.

7. After the formation of the State of Gujarat w.e.f. 1/5/1960 under the Bombay Re-organisation Act, 1960, the Government of Gujarat issued notification dtd.17/10/1964 rescinding Bombay Government's Notification dtd.21/5/1958 and specifying inter-alia the areas within the limits of Municipal Borough of Baroda as it existed on 21/5/1958 as being reserved for Non-agricultural and Industrial development. Thus, the land continued to remained exempted from the application of sec.1 to 87 of the Act. The Govt. of Gujarat vide notification dtd.23/8/1976 rescinded its earlier notification dtd.17/10/1964, meaning thereby the provisions of Tenancy Act are made applicable to the lands situated within the limits of Municipal

Borough of Baroda.

8. That Rasiklal Tilakram Jaiswal filed Tenancy Case No.3467 of 1977 on 20/9/1977 under sec.32(O) of the Act for fixing purchase price of the land bearing Survey No.707 admeasuring 20 Acres and 26 Gunthas, situated at Vadodara (Kasaba) contending inter-alia that he has become deemed purchaser of the land in question and that the land belongs to trust; that the said land was taken for cultivation in 1956 by Surajram Kashiram i.e. his uncle for cultivation in auction; that Surajmal being elder member in the family, his name was given in the auction, however, cultivation was made by the applicants alone and the said Surajmal had never cultivated the land at any time after 1956-57, though his name was entered in Pani-Patrak along with the name of Rasiklal Tilakram Jaiswal. The name of Surajmal Kashiram was deleted vide Mutation Entry No.5837 in the year 1967-68 and since then his name alone was in Pani Patrak in the column of tenant and he is in actual possession of the suit land and that he has spent an amount of Rs.25,000 to Rs.30,000 for improving the said land and is cultivating fruit trees and different crops.

9. That on appreciation of the evidence, the Mamlatdar and ALT, Vadodara held the said Rasiklal Tilakram Jaiswal as tenant and held that he is a deemed purchaser of the said land in question and fixed purchased price of Rs.21,225.75 with running interest of 4.1/2%. Being aggrieved by and dissatisfied with the order passed by the Mamlatdar and ALT, Vadodara dtd.6/7/1979 in Tenancy Case No.3467 of 1977, the petitioner trust – original landlord preferred an appeal before the the Deputy Collector (Tenancy Appeals), Vadodara being Appeal No.19 of 1979 and the the Deputy Collector (Tenancy Appeal) by its order dtd.23/10/1985 dismissed the said appeal confirming the order passed by the Mamlatdar and ALT, Vadodara dtd.6/7/1979 in Tenancy Case NO.3467 of 1977. Being aggrieved by and dissatisfied with the order passed by the the Deputy Collector (Tenancy Appeals), Vadodara dtd.23/10/1985 in Tenancy Appeal No.19 of 1979 in dismissing the same and confirming the order passed by the the Mamlatdar and ALT, Vadodara dtd.6/7/1979 in Tenancy Case NO.3467 of 1977 in declaring the Rasiklal Tilakram Jaiswal - respondent herein, as tenant and deemed purchaser of the land in question under sec.32(O) of the Act

and fixing the purchase price, the petitioner trust – original landlord preferred a revision application being Revision Application No.TEN/BA/384 of 1986 before the the Gujarat Revenue Tribunal and the the Gujarat Revenue Tribunal by its impugned judgment and order dtd.25/1/1990 dismissed the said revision application confirming the order passed by both the authorities below declaring Rasiklal Tilakram Jaiswal – respondent herein as tenant of the land in question and deemed purchaser u/sec.32(O) of the Act and fixing purchase price of the land in question. Being aggrieved by and dissatisfied with the order passed by the the Gujarat Revenue Tribunal dtd.15/1/1990 in Revision Application No.TEN/BA/384 of 1986, the petitioner trust – original landlord has preferred the present petition under Article 227 of the Constitution of India.

10.Mr.Navin Pahwa, learned advocate appearing on behalf of the petitioner trust – original landlord has vehemently submitted that the the Gujarat Revenue Tribunal as well as both the authorities below have materially erred in declaring Rasiklal Tilakram Jaiswal – respondent herein as tenant of the suit land. He has also further submitted that all the authorities

below have materially erred in holding that Rasiklal Tilakram Jaiswal was cultivating the land as tenant and that has resulted into miscarriage of justice. He has also further submitted that as held by the Hon'ble Supreme Court in the judgment rendered in the appeal preferred by Surajram Kashiram Jaiswal which is reported in AIR 1986 SC 2204, the provisions of Bombay Tenancy Act will not be applicable to the land in question, all the authorities below have materially erred in declaring Rasiklal Tilakram Jaiswal as tenant and the same is contrary to the judgment of the Hon'ble Supreme Court with respect to the land in question. He has also further submitted that as on 1-4-1957, the Tenancy Act was not applicable and even thereafter in view of the Notification dtd.21/5/1958, the provisions of Bombay Tenancy Act were not made applicable, as the lands situated within the limits of municipal Borough of Baroda were reserved for Non-Agricultural and Industrial development and exemption granted under sec.88(1)(B) of the Act came to be continued by further Notification of the State Government dtd.17/10/1964 and the said Notification dtd.17/10/1964 came to be rescinded vide Notification dtd.23/8/1976 and

therefore, the provisions of the Bombay Tenancy Act would not have been made applicable retrospectively and therefore, it is submitted that all the authorities below have materially erred in declaring Rasiklal Tilakram Jaiswal - respondent herein as tenant under sec.32(O) of the Act. He has also further submitted that the land in question was never cultivated by Rasiklal Tilakram Jaiswal as tenant and therefore, the said Rasiklal Tilakram Jaiswal could not have been declared as tenant / deemed purchaser of the land in question and therefore, it is requested to allow the present petition by quashing and setting aside the order passed by all the authorities below declaring Rasiklal Tilakram Jaiswal as tenant and deemed purchaser under sec.32(O) of the Act with respect to the land in question.

11.Per contra, Mr.Mihir Thakor, learned Senior Advocate appearing on behalf of the respondent tenant while opposing the present petition and supporting the orders passed by all the authorities below has submitted that considering the provisions of sec.32(O) of the Act, Rasiklal Tilakram Jaiswal – respondent is rightly declared as deemed purchaser. He has also further submitted that when the Hon'ble Supreme

Court decided the appeal preferred by the heirs of Surajram, Notification dtd.21/5/1958 was pressed into service. However, subsequent notification dtd.23/8/1976 by which the earlier notification issued under sec.88(1)(B) of the Act dtd.17/10/1964 came to be rescinded, was not brought to the notice of the Hon'ble Supreme Court and/or the same was not pressed into service and therefore, the Hon'ble Supreme Court had no occasion to consider the effect of Notification dtd.17/10/1964 reserving the areas within the limits of Municipal Borough of Baroda as being reserved for Non-agricultural and Industrial development and subsequent notification dtd.23/8/1976 rescinding the earlier Notification dtd.17/10/1964 and therefore, it is submitted that in view of the the notification dtd.17/10/1964 which further came to be rescinded by notification dtd.23/8/1976, the decision of the Hon'ble Supreme Court reported in AIR 1986 SC 2204 will not come in the way of the respondent tenant. He has also further submitted that before the Hon'ble Supreme Court, the question with regard to subsequent notification was not there and therefore effect of rescinding notification dtd.17/10/1964, by subsequent Notification

dtd.23/8/1976 was not before the Hon'ble Supreme Court. He has also further submitted that even keeping aside the dispute / controversy with regard to retrospective operation of the Bombay Tenancy Act, on issuance of the notification dtd.23/8/1976 rescinding earlier notification dtd.17/10/1964 and making provisions of the Bombay Tenancy Act applicable and whether the same cam be done retrospectively or not, in view of the provisions of sec.32(O) of the Bombay Tenancy Act, as admittedly Rasiklal Tilakram Jaiswal was cultivating the land in question after Tiller's Day, the said Rasiklal Tilakram Jaiswal was required to be declared as deemed purchaser and therefore, it is submitted that all the authorities below have rightly declared Rasiklal Tilakram Jaiswal – respondent herein as tenant / deemed purchaser of the land in question and therefore, it is submitted that in view of the provisions of sec.32(O) of the Act, the controversy with regard to retrospective applicability of Bombay Tenancy Act on the Notification being issued dtd.23/8/1976 is not required to be considered as the same would be exercising in futility as even otherwise on plain reading of sec.32(O) of the Act,

Rasiklal Tilakram Jaiswal – respondent herein is to be succeeded.

12.So far as the contention on behalf of the petitioner that all the authorities have materially erred in holding that Rasiklal Tilakram Jaiswal – respondent herein was cultivating the land in question as tenant, Mr.Mihir Thakor, learned senior advocate has submitted that even before the learned Civil Judge (SD), Vadodara in Regular Civil Suit No.217 of 1994 more particularly in para 3 of the plaint, it is specific case of the petitioner that the deceased Rasiklal Tilakram Jaiswal – respondent herein was tenant and was cultivating the land in question as tenant and therefore, in view of the specific contention and admission on the part of the petitioner, it is not open for the petitioner now to contend that the said deceased Rasiklal Tilakram Jaiswal – respondent herein was not cultivating the land in question as tenant.

13.He has also further submitted that even otherwise also, there are concurrent finding of facts by all the authorities below that Rasiklal Tilakram Jaiswal – respondent herein was cultivating the land as tenant and even on considering the deletion of name of

Surajram Kashiram vide Mutation Entry No.3857 and continuing the name of Rasiklal Tilakram Jaiswal – respondent herein in the Pani-Patrak in the column of tenant. Submitting accordingly, it is requested to dismiss the present petition with costs.

14.Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the land in question was situated within the limits of former Municipal Borough, Baroda. A notification came to be issued by Government of Bombay on 21/5/1958 under sub-sec.(1)(B) of sec.88 of the Act No.13 of 1956 declaring that the lands within the limits of City of Baroda were reserved for Non-agricultural and Industrial Development and therefore, the provisions of Tenancy Act were not applicable to the land in question, as the same was situated within the Municipal limits of city of Baroda. Subsequently, on formation of the State of Gujarat under the Bombay Re-organization Act, 1960, Government of Gujarat issued notification dtd.17/10/1964 rescinding Bombay Government's Notification dtd.21/5/1958 and specifying inter-alia the areas within the limits of Municipal Borough of Baroda as it existed on 21/5/1958 as being reserved for Non-agricultural and

Industrial development. Thus, the land in question continued to remain exempted from application of sec.1 to 87 of the Act. However, the said notification dtd.17/10/1964 came to be rescinded by notification dtd.23/8/1976, meaning thereby the provisions of Bombay Tenancy Act came to be made applicable and therefore, it is the contention on behalf of the petitioner that as by Notification dtd.23/8/1976, Notification dtd.17/10/1964 came to be rescinded and the provisions of the Tenancy Act came to be made applicable w.e.f. 23/8/1976, Rasiklal Tilakram Jaiswal – respondent herein could not have been declared as tenant, by retrospectively applying the provisions of Bombay Tenancy Act and that too more particularly when there is specific finding given by the Hon'ble Supreme Court declaring and holding that the provisions of the Bombay Tenancy Act were not applicable with respect to the land in question. It is the contention on behalf of he petitioner that in view of the decision of the Hon'ble Supreme Court reported in AIR 1986 SC 2204, specifically holding that with respect to the land in question, the provisions of Bombay Tenancy Act are not applicable, all the authorities have materially erred in declaring

Rasiklal Tilakram Jaiswal - respondent herein as tenant / deemed purchaser. Therefore, firstly, it is required to be consider whether the decision of the Hon'ble Supreme Court with respect to the very land in question will come in way of Rasiklal Tilakram Jaiswal - respondent herein in declaring him as tenant / deemed purchaser under sec.32(O) of the Act or not. On going through the decision of the Hon'ble Supreme Court, it appears that the Notification dtd.21/5/1958 issued by the Bombay Government was pressed into service and neither the subsequent notification dtd.17/10/1964 nor Notification dtd.23/8/1976 by which the notification dtd.17/10/1964 came to be rescinded and the provisions of Bombay Tenancy Act were made applicable, was brought to the notice of the Hon'ble Supreme Court and/or were not pressed in service. Therefore, the effect of Notification dtd.17/10/1964 and 23/8/1976 were not under the consideration by the Hon'ble Supreme Court in the aforesaid reported decision and therefore, the said decision will not come in the way of Rasiklal Tilakram Jaiswal - respondent herein. The decision of the Hon'ble Supreme Court and the ratio is required to be considered in light of the

controversy and in the facts of each case. As stated hereinabove, there was no controversy before the Hon'ble Supreme Court with regard to subsequent notification dtd.23/8/1976.

15.It is the contention on behalf of the petitioner that as by Notification dtd.23/8/1976, Notification dtd.17/10/1964 came to be rescinded, the provisions of Bombay Tenancy Act came to be applicable on and after 23/8/1976 and therefore, the provisions of Bombay Tenancy Act are not required to be made applicable retrospectively. However, in view of the provisions of sec.32(O) of the Bombay Tenancy Act. Even otherwise, Rasiklal Tilakram Jaiswal / tenant - respondent herein has become deemed purchaser and therefore, the aforesaid question has become academic, as independently of the above dispute, on the strength of the provisions of sec.32(O) of the Act which is applicable to the State of Gujarat, for the reasons stated hereinafter, Rasiklal Tilakram Jaiswal - respondent herein is required to be declared as tenant and deemed purchaser and he has, in fact, became deemed purchaser.

16.For deciding the aforesaid question, first of all it is required to be considered whether Rasiklal Tilakram

Jaiswal - respondent herein was cultivating the land in question as tenant or not. Though it is the contention on behalf of the petitioner that all the three authorities below have materially erred in holding that said Rasiklal Tilakram Jaiswal - respondent herein was cultivating the land as tenant. However, in view of the admission of the very petitioner in Regular Civil Suit NO.217 of 1994 filed by the very petitioner against the very respondent in the court of learned Civil Judge (SD), Baroda more particularly in para 3 of the plaint that the deceased Rasiklal Tilakram Jaiswal - respondent herein was tenant and was cultivating the land as tenant, the contention on behalf of the petitioner cannot be accepted and in view of the admission on the part of the petitioner, it is not open for the petitioner now to contend that the deceased Rasiklal Tilakram Jaiswal - respondent herein was not cultivating the land as tenant. Even otherwise, there are concurrent findings of facts of all the authorities below and all the authorities below have concurrently held that the deceased Rasiklal Tilakram Jaiswal - respondent herein was in possession of the land in question after the year 1957 and was cultivating the land in

question as tenant. All the three authorities below inclusive of the the Gujarat Revenue Tribunal have also considered the Mutation Entry in the revenue record more particularly after the year 1967-68, by which the name of the deceased Rasiklal Tilakram Jaiswal - respondent herein is shown in the Pani-Patrak in the column of tenant and therefore, Rasiklal Tilakram Jaiswal - respondent herein was cultivating the land as tenant at least since 1966-67 and/or as on 23/8/1976. At this stage, the provisions of sec.32(O) of th Act applicable to Bombay Area of Gujarat State is required to be considered which reads as follows;

Sec.32(O). Right of tenant whose tenancy is created after the tiller's day to purchase land.-

(1) In respect of any tenancy created after the tiller's day, notwithstanding any agreement or usage to the contrary, a tenant cultivating personally [shall be deemed to have purchased on the date of expiry of one year] from the commencement of such tenancy from the

landlord the land held by him or part thereof as will raise the holding of the tenant to the ceiling area.

(2) The provisions of sec. 32 to 32N (both inclusive and of sec.32P, 32Q and 32R in so far as they may be applicable shall apply to the purchase to the land by a tenant under sub-section(1).

17.The deceased Rasiklal Tilakram Jaiswal - respondent herein submitted an application before the the Mamlatdar and ALT under sec.32(O) of the Act for fixing the purchase price of the land bearing Survey No.707 on 20/9/1977 i.e. after a period of even one year of notification dtd.23/8/1976. Therefore, assuming that the provisions of Bombay Tenancy Act are made applicable on and after 23/8/1976, when it is found that deceased Rasiklal Tilakram Jaiswal - respondent herein was cultivating the land in question as tenant even as on 23/8/1976, he has become deemed purchaser of the land in question on the date of expiry of one year from the date of commencement of such tenancy and therefore, even otherwise even considering the provisions of sec.32(O)

of the Act when Rasiklal Tilakram Jaiswal - respondent herein was cultivating the land as tenant and even admission on the part of the petitioner in para 3 of the plaint of Regular Civil Suit No.143 of 1958 pending in the Court of learned 3rd Joint Civil Judge (SD), Vadodara against heirs of Rasiklal Jaiswal for the permanent injunction that the deceased Rasiklal Tilakram Jaiswal - respondent herein was tenant and was cultivating the land in question as tenant, deceased Rasiklal Tilakram Jaiswal - respondent herein is rightly declared as tenant and deemed purchaser of the land in question and the the Mamlatdar and ALT has rightly fixed the purchased price which is rightly confirmed by the the Deputy Collector.

18.In view of the fact that even otherwise deceased Rasiklal Tilakram Jaiswal - respondent herein has become deemed purchaser and considering the provisions of sec.32(O) of the Act, as stated hereinabove, other questions as to whether by subsequent notification dtd.23/8/1976 rescinding earlier notification dtd.17/10/1964 and making provisions of Bombay Tenancy Act applicable by the Notification dtd.23/8/1976, whether the provisions of

Bombay Tenancy Act is applicable retrospectively or not has become academic and the said larger question is not required to be considered, in view of the reasons as aforesaid.

19.For the findings recorded hereinabove, it cannot be said that the authorities below have erred in declaring deceased Rasiklal Tilakram Jaiswal - respondent herein as tenant and deemed purchaser under sec.32(O) of the Act and/or committed any error in fixing the purchase price which call for any interference at the hands of this Court in exercise of the powers under Article 227 of the Constitution of India. Under the circumstances, the present petition is required to be dismissed and is accordingly dismissed. Rule is discharged. The interim relief granted earlier stands vacated forthwith. However, there will be no order as to costs.

(M.R.SHAH,J.)

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